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Practice of Foreign Countries in the Interaction of Judicial Authorities and Civil Society Institutions

У дослідженні проаналізовано зарубіжний досвід взаємодії органів судової влади та інститутів громадянського суспільства. Вказується, що до ефективних засобів здійснення соціального контролю громадянського суспільства за діяльністю носіїв судової влади слід віднести не лише декларування доходів, а й витрат. Зроблено висновок, що журналісти не завжди обізнані із специфічними правилами висвітлення судової проблематики та про брак в українських медіа журналістів, які б мали належну кваліфікацію та знання, потрібні для висвітлення судової тематики.

Ключові слова: *громадянське суспільство, органи судової влади, правова держава, моніторинги судових процесів, Європейський суд з прав людини.*

В исследовании проанализирован зарубежный опыт взаимодействия органов судебной власти и институтов гражданского общества. Указывается, что к эффективным средствам осуществления социального контроля гражданского общества за деятельностью представителей судебной власти следует отнести не только декларирование доходов, но и расходов. Сделан вывод, что журналисты не всегда знакомы со специфическими правилами освещения судебной проблематики и о нехватке в украинских медиа журналистов, которые имеют надлежащую квалификацию и знания, необходимые для освещения судебной тематики.

Ключевые слова: *гражданское общество, органы судебной власти, правовое государство, мониторинги судебных процессов, Европейский суд по правам человека.*

The study analyzed the foreign experience of the interaction of judicial authorities and civil society institutions. It is noted that effective means of exercising social control of civil society for the activities of the judiciary should include not only declaration of incomes, but also expenses. After all, a person who holds office in a judiciary must understand the need for self-restraint of certain of his rights, which is conditioned precisely on the publicity of his office, and he must consider himself a highly-qualified representative of the citizen, a protector of their interest to live under the protection of legal safeguards. It is concluded that journalists are not always familiar with the specific rules of coverage of the judicial issues and the Ukrainian media lacks journalists who would have the proper qualifications and knowledge needed for covering judicial issues. In view of this, it would be appropriate to develop Rules for work of photography and filming, television, video, audio and other electronic media in the courtrooms. The authors proposed their possible structure: 1. General; 2. Rights and duties of journalists; 3. The rights and duties of a judge-speaker, a spokesperson or other person acting as interlocutor for providing media relations; 4. Access to court premises; 5. Access to court sessions; 6. Photography and video shooting in the courtroom; 7. Other issues of fixing information, holding photography and video shooting outside court and in court corridors; 8. Photographing and video shooting outside the court session. It is noted that the increase of the effectiveness of cooperation between the judiciary and civil society institutions is facilitated by monitoring judicial processes, the practice of which exists, in particular, in Kazakhstan, Kyrgyzstan, etc.

Keywords: *civil society, judicial authorities, rule of law, monitoring of court proceedings, European Court of Human Rights.*

Introduction. At the present stage, the priority vector for the development of the Ukrainian state is the improvement of democratic procedures, which envisage, in particular, the interaction of judicial authorities with civil society institutions, as well as informing the population about the activity of courts. In order to effectively carry out judges' professional duties, it is important to study the interaction between the judiciary and civil society. Thus, on the way to establish an effective dialogue, there are still obstacles that need to be addressed, which in turn require the study of the experience of other states, and based on the analysis and rethinking of this experience, it is possible to find their own ways of improving the relationship between courts and civil society taking into account national legislation. This suggests that re-thinking of the essence and content of the judiciary in Ukraine is only at an early stage.

Recent research and publications. In publications and scientific works, the issue of cooperation between the judiciary and civil society institutions has been studied by such researchers as O. Avtonomov, S. Alekseev, D. Baronin, A. Bilova, M. Vilgushinskyi, L. Vinokurova, O. Gavrilyuk, V. Gorodovenko, R. Gryniuk, S. Denysiuk, O. Zaichuk, P. Kablak, M. Kobylianskyi, A. Kolodii, A. Korotun, I. Kostenko, V. Kravchuk, V. Kryvenko, M. Latsyba, V. Maliarenko, I. Nazarov, O. Ovsiannikova, O. Polieva, S. Praskova, S. Prylutskyi, A. Selivanov, V. Spivak, S. Tymchenko, V. Shapoval, Yu. Shemuchenko, S. Stogun and others. However, the study of the experience of foreign countries regarding the interaction of judicial authorities with civil society institutions has not been sufficiently reflected in publications and scientific works. Thus, the study and analysis of the basic conditions and principles of effective and efficient interaction of the judiciary and civil society institutions in foreign countries and their adaptation in Ukraine at the present stage of its development is one of the important tasks.

From the point of view of the interaction of courts with the public and the media, the US experience is interesting. So taking into consideration the US legal system, which consists of 50 separate legal systems of the states and the federal law system, and its precedencial character, from the middle of the 20th century access of television cameras to the courtroom was limited, largely in response to a significant resonance around the trial of the Sam Sheppard murder. In this case the Supreme Court thought that the main disadvantage of the case was the failure of the judge, who was in the process, to keep the situation in the courtroom under proper control. The judge did not carefully think about the possibility of taking other measures to reduce the amount of media, which provoke prejudice, and to protect judges from external influences. In fact, he completely ignored the warnings from the defense counsel and actually allowed the media to lead the process. The judge should have also prohibited officials from making confidential statements in the press. The Supreme Court of the United States came to the conclusion that the trial of the accused was not objective, and also indicated the various means by which the judge could have restricted the resonance. After the US Supreme Court decided that «the judge did not fulfill his duty to protect the defendant from resonance, which imbued the whole congregation and naturally provokes bias, and could not keep control of destructive forces in the courtroom» [1, p. 165].

Journalists in the United States have no right to get acquainted with court decisions prior to the proclamation or to film in federal courts. The coverage by the electronic media of criminal lawsuits in federal courts clearly falls under the prohibition contained in the Federal Code of Criminal Procedure 53 – one of the rules of criminal justice, adopted in 1946. It states: «The court should not allow taking of photographs in the courtroom under the time of the hearing and the broadcast of the hearing on the radio from the courtroom» [1, p. 166]. It may be noted that the court is an institution that not only protects the constitutional rights and freedoms of a person and a citizen, but also specifies the content of these rights, in particular their restrictions.

In 1990 the Judicial Conference adopted a report of the Special Committee on Filming in the courtroom containing a recommendation to make a pilot program in which electronic media would be allowed to cover the progress of civil litigation processes in six district and two appellate courts. The conference also criticised the prohibition contained in the Code of Conduct and adopted a filming policy put out in the Judicial Policies and Procedures Directives, which states: «A judge may grant radio broadcasting, television broadcasting, recording and photographing permission in the room court and adjoining premises during investiture, naturalization and other ceremonial procedures. A judge may grant permission for such actions in the courtroom or

adjacent premises during other court sessions or between such meetings only in the following cases: for the submission of evidence, for fixing the course of the trial, for security purposes, for other purposes of judicial administration, and in accordance with the pilot programs approved by the Judicial Conference of the United States of America» [2].

In 1994 the Judicial Conference did not support the recommendations of the Committee on Expanding the Practice of Covering the Civil Cases with the Use of Filming. Later on, the Judicial Conference strongly encouraged District Courts to issue an order reflecting the decision of the Conference on the Prohibition of Photographing and Illumination on Radio and Television of Hearings in US District Courts. In this regard, in order to settle the issue in district courts, they issued a permanent order, instructions and directives on taking photographs, recording the broadcasting of hearings in the courtroom [3]. Thus, one of the directions of the relationship between the judiciary and civil society institutions is to ensure openness of justice, but in practice restrictions on the openness of the court process are justified and must be within the limits of the current legislation.

With regard to the issue of transparency of the judiciary, an example is the ruling of the Supreme Court of the United States adopted in 1980 in the case of Richmond Newspapers, Inc. v. Virginia» [4]. Interpreting the First Amendment to the US Constitution, which guarantees freedom of expression, the Court indicated that it includes the right of citizens to have access to criminal justice. The basis of this right is recognition of the important role played by public information about criminal trials in democratising the life of society. According to the Supreme Court, the experience of conducting open hearings in early periods of history (in the colonial period of America's history) partly reflects the recognition of the fact that open trials are important from the point of view of social therapy – recognition that existed long before the emergence of a person's behavioral science. Even in the absence of experts in this field of science who later put this concept into a verbal form, basing on their experience and observation people thought that the means used by the judiciary, especially in criminal proceedings, should be supported by the approval of the public as the procedures themselves and their results. Many American courts have extended this right to attend court hearings during criminal proceedings and civil cases. Indeed, there are a number of weighty and convincing arguments backed up by history and practice in favor of extending this right of access to civil justice. As a member of the Supreme Court of the United States of the 19th century, Oliver Wendell Holmes, once noted, access to civil litigation is «extremely important» in relation to «the guarantees that are made public in terms of proper administration of justice. It is desirable that the court proceedings be conducted under the supervision of the public, and not because the dispute between one citizen and the other concerns the public, but given the crucial importance of ensuring that those involved in the administration of justice have always treated this case with all sense of responsibility in front of society, and that every citizen could see with his own eyes how this public-law duty is carried out» [5, p. 68].

The duty to make judges' declarations about property, income, expenses and financial obligations is a means of social control over the integrity of the judiciary, and therefore one of the mechanisms of its legitimation. But apart from the primary mechanism for such disclosure (publication of declarations of all judges on the Internet), it is necessary to foresee declaration not only of incomes, but also of expenses. It is this practice that is used in the United States, Germany and many other countries and is more effective in terms of the purpose of its introduction. Such proposals will not in any way violate the judge's right to privacy, because on one hand, a person in judicial power should understand the need for self-restraint of certain rights, which is conditioned by the publicity of his office, and on the other hand, as S. Pashyn correctly pointed out, the judge should consider himself not part of the national elite, which seeks to ensure a high standard of living, but as one that bear the burden of public service of a highly-qualified citizen representative, a protector of their interest to live under the protection of legal safeguards [6, p. 58].

The development of the information society updates the electronic version of justice which contains, firstly, the automation of judicial procedures, and secondly, the facilitation of informing interested persons through the Internet, mass media, and others. The European Program «Justice Program» and «Right, Equality and Citizenship Program 2014-2020» [7] can be considered as an example of the practical

implementation of the regional rules of justice. The general objective of the e-court is to establish a genuinely European area of justice based on mutual trust, as well as to facilitate judicial cooperation in civil and criminal cases, assistance in seminars for judges, prosecutors and other lawyers. According to Article 6 of the Right, Equality and Citizenship Programme the further development and funding of the e-Justice portal is supported. In fact, the introduction of the e-court has become a significant achievement in the development of e-justice [8, p. 223].

At the level of the draft Strategy for European e-Justice 2014-2018 the implementation of the main objectives of e-justice has been detailed: the European e-Justice portal, interaction, legislative aspects, the European legal semantic network, registry interactions, networking, cooperation between users of the relevant portals in the system of European e-justice, implementation of translations, rights and obligations in the field of e-justice, human resources development, financing, external relations, Multiannual action plan on e-Justice 2014-2018 [9].

The Estonian electronic file system integrates police databases (MIS), prosecutors (ProxIS), courts (KIS), prison services (VangIS) that interact with each other. The established base has a strong force in the following categories: electronic certificate, electronic signature and e-justice services. The formation of the Estonian model of electronic court is similar to the Ukrainian realities. In particular, in 2002-2005 publication of court decisions and the Internet took place within KOLA (statistics were also provided). Instead, in the years 2006-2013/2014 within the framework of KIS (compatibility – X-ROAD) implementation of the main functions of the document management system was ensured. Later on, Estonia continued to develop the electronic court system. Since 2008 payment orders have been processed electronically. In 2013/2014 the system KIS2 (compatibility – E-FILE), the modern system of document circulation for courts, began its working. At the same time, the Supreme Court had a separate system of the First and Second Instances until 2014 [10, p. 67].

The unique aspect of functioning of the Estonian model of the electronic justice system was the use of an electronic ID-card – an integrated tool for the design of electronic services. There is a web-based public e-File information system that allows parties and their representatives to participate in civil, administrative, criminal proceedings, and in the process of reviewing and resolving electronic misconduct cases [10, p. 67-68]. Entering this portal, the Estonian citizen can see all documents delivered to him in any court proceeding. The Public e-File user can determine the e-mail he wants to use to receive messages. Each Estonian has an email address @ eesti.ee. The message contains a reference to a document and a note (in order to access the portal, you must log in using the national e-mail of the person). Public e-File is fully electronic common channel for proceedings with payment orders that can be used to initiate a case or communicate with the court. For other applications, Public e-File is also used, but alternative methods are available (correspondence, etc.).

In Italy completely electronic civil justice (TOL) was introduced in 2014-2015, but the general scheme of interaction between the participants in the process and functioning of the system may be of interest in Ukrainian realities. Thus, the e-mail system is certified (PEC) (introduced in 2011), 2-step authentication of users when logging onto a special portal is used, and electronic digital signature is used for sending electronic documents (using the PDF and XML format). Since 2013, at the level of the law there has been a requirement for exclusively electronic interaction between courts (and at the end of 2014 – even in criminal proceedings) [10, p. 68].

Once it was typical when litigation was carried out by judges who hid their face from the accused. The system of «faceless judges» existed in Peru during the criminal cases of terrorism and drug trafficking. The community was not allowed on such processes, appeals and hearings were held at the police station before judges sitting at the screen that concealed their faces from the accused. Judges in procedural documents instead of names used serial numbers. The Human Rights Committee has demanded that the Peruvian government abolish the system of «faceless judges» and ensure the restoration of public hearings for all those accused of crimes, including those accused of terrorism related activities. The practice of holding secret court sessions of «faceless judges» has been recognised by the Human Rights Committee as contradicting the fundamental provisions of the International Covenant on Civil and Political Rights [11, p. 169-170].

Taking into account the foreign experience, it would be appropriate to develop not only the

Regulations on the interaction of the courts with the media and journalists, but also the rules for working in the courtrooms of photography and filming, television, video, audio and other electronic media.

In 2010 a Polish Forensic Research Foundation was set up in the Republic of Poland, which started a specially-developed methodology for assessing the activity of a judge during a trial by ordinary citizens [12]. A questionnaire consisting of 22 questions was developed and fitted on a sheet of A4 format. The majority of questions can be answered by ordinary citizens without legal education. For example, «Has the hearing been scheduled? If not, what was the reason for this, and how has it been reported? What is the scheduled and actual start of the meeting? If the meeting started later, please indicate what caused it. Who was late? Did the person apologize for the delinquency of the case?» and so on. The questionnaires were conducted by volunteers, the results of questionnaires became the driving force to a greater extent, not for the analysis of judicial activity, but for the improvement of the latter.

In Kazakhstan there is an experience of monitoring litigation. Monitoring was conducted in the following forms: general, when observers attended any court sessions, and full, in which observers chose one criminal case from the newly appointed and traced it from the first session to the sentencing. Within the framework of full monitoring, observers attended meetings from 53 criminal cases, 332 cases were covered by general monitoring. In total, observers attended trial sessions under the leadership of 122 judges [13].

The monitoring allowed to identify a number of problems in the implementation of criminal justice in the courts of Kazakhstan. For example, compliance with the rules of adherence to judicial ethics was not always followed, cases of unlawful restriction of observers access directly by judges or court personnel were sometimes recorded; limited observers access at open court sessions; part of court sessions was held in places not suited for conducting court trials. Quite often there was a lack of a schedule for dealing with cases, which became a significant barrier for observers. Half of the court sessions took place with a delay of more than 15 minutes, which is unacceptable since the lawyer is primarily an elite of society, a model for an example. And it is no coincidence that a logical question arises: do I want to match this ‘model’? The answer is obvious ... Somewhere the judge did not explain the defendant’s right not to testify against himself; in almost half of the cases the right to an interpreter was violated. The monitoring also revealed other violations of international standards of fair criminal justice [14].

The monitoring of judicial processes in Kazakhstan is interesting for Ukraine, considering that a qualitative questionnaire has been developed for its conduct and it can be adapted to the criminal proceedings of Ukraine. Also, in Kazakh monitoring there are special observer meetings at a certain stage of the implementation of the monitoring program where each observer shares his own experience of monitoring open court sessions. The results of such discussions were amended and supplemented. Kazakh monitoring reports give the reader the opportunity to find out the essence of the problem, even in the absence of special legal education, which is the emergence of an active civic position.

A similar monitoring of court sessions was held in Kyrgyzstan, which mainly concerned cases about the protection of the electoral rights of citizens and other participants in the election process [15].

Arbitration Courts of the Russian Federation use the latest technologies to inform their activities. Thus, the Mobile Cards system allows Android mobile device users to access detailed information about any arbitration case at any time. Through the information resource «Presidium Online» everyone can watch how the Presidium of the Supreme Arbitration Court of the Russian Federation is working. Also, the news about the work of this court is highlighted on its official website and in the social network Twitter. The site of the Supreme Arbitration Court of the Russian Federation is a powerful information resource that allows to post information on the functioning of the system of arbitration courts of the Russian Federation on the Internet. In addition, an automated information system for information kiosks also operates in the system of these court. Citizens are promptly informed about the courts, schedules of court sittings and adopted judicial acts through it [16, p. 23-24].

In Canada, the court interaction with the media is facilitated by the Department of Public Relations. For the media, it is the primary source of information that should always be objective, accurate, understandable and timely. The department has several divisions, including strategic communications and media relations. Press conferences plans are made, statements and announcements are edited, press releases are

published here. There is also a Web-page, a peculiar reference bureau, which is updated around the clock. The department also works with public requests (correspondence, calls from the media), and therefore maintains operational communication with other departments, so that the answers to queries are accurate [2].

The Media Relations Department is responsible for preparing information materials for prosecutors who respond to media questions or opposition representatives in the province [2].

In Canada several forms of transmitting materials to journalists from the session hall are practised, namely by: 1) broadcasting court sessions over the Internet; 2) archiving (the translation of the process is stored 90 days from the first day of the broadcast on the Web-page); 3) manufacturing for the media representatives of the DVD with the recording of the process (with the consent of the parties to shoot); 4) provision of radio communications of litigation [2].

It is also interesting that journalists have access to information about court decisions before they are pronounced in a lawful manner, which helps the media prepare for comments. Before the announcement of a court decision, while in a special room, journalists get acquainted with the verdict of the court, but commenting on it before its official announcement is not entitled. Following the announcement by the court, journalists, leaving the room, comment on it through video fixation or otherwise [2]. Emphasising a significant role of journalists in the judiciary by the Supreme Court of Canada, where in particular, all the proper tools for the productive work of the journalist are provided at a high level, media access to justice in Canada is even more open compared to a highly developed US state.

A week before the start of the process they hold a briefing for the press, where journalists receive a plan of work, an explanation of every case that will be heard during the session, as well as answers to their questions. An alternate briefing is made when the court publishes a decision to hear cases. They discuss the facts that underlie the decision of the case, pointing to the more important paragraphs used in making the decision. However, these materials can not be used in the publication of a public announcement decision [2].

Thanks to such briefings, the accuracy of the coverage of court work has improved. The day before the official announcement of the decision of the case, media representatives come to the premises for hour and a half to review the decision in the case (but then no use of the means of communication is allowed yet). Journalists can comment on it immediately after the official announcement [2].

In Ukraine the coverage of the trial through the Internet is not yet practised, The distribution of relevant materials through television, radio, or the Internet is possible after conducting appropriate filming, in accordance with the rules of the current procedural law. A public information portal on judicial activity is a public information system, in which in accordance with the Law of Ukraine «On access to court decisions», a Unified State Register of court decisions was made. Court decisions are included in it, except those access to which is restricted by law.

Summing up the aforementioned, one can conclude that the problem of cooperation between the judiciary and civil society institutions is multidimensional. The interaction of these actors on the basis of partnership is necessary for the development of Ukraine as a democratic, social and legal state. The experience of democratic states of the world shows that it is interaction that allows achieving greater efficiency in many spheres of public life. Further strengthening of civil society as a guarantee of democratic development of the state requires the improvement of the state policy regarding the interaction of judicial bodies with civil society institutions, taking into account the best world practices in conjunction with national specifics.

Conclusions. As a result of the research, positive developments regarding the experience of foreign countries in the context of optimising the effectiveness of interaction between the judiciary and civil society institutions are analysed, namely:

1. As one of the means of social control of civil society by the activity of the carriers of the judiciary, besides the primary mechanism of such disclosure (publication of declarations of all judges on the Internet), there is declaration of not only incomes but also expenses. After all, a person who holds office in a judiciary must understand the need for self-restraint of certain of his rights, which is conditioned precisely on the publicity of his office, and he must consider himself a highly-qualified representative of the citizen, a protector of their interest to live under the protection of legal safeguards.

2. Relations between the judiciary and the media require the creation of an effective system of interaction, which in its turn, can be recognised as one of the priority directions of democratization of modern Ukraine. In this case, one of the guarantees of legality, objectivity and transparency in the administration of justice by the judicial authorities is to inform civil society institutions through the media about the activities of the judicial system and individual judges. The analysis of the experience of foreign countries in the sphere of cooperation between judicial authorities and civil society institutions suggests that the development and improvement of relations with the media is important, first of all, for the judicial system itself, as the public receives a large amount of information precisely through the media. Taking into account the US experience, freedom of discussion should have the widest range, taking into account restrictions on the openness of the court process within the framework of the current legislation. Considering the fact that journalists are not always aware of the specific rules of coverage of litigation and that there is the lack of Ukrainian media journalists who would have the proper qualifications and knowledge needed to cover judicial issues, it would be appropriate to develop not only the Provisions on the interaction between courts and the media and journalists, whose experience of realization exists in Ukraine, as well as the Rules for working of photography and filming, television, video, audio and other electronic media that can be structured in the courtrooms in this way: 1. General; 2. Rights and duties of journalists; 3. The rights and duties of a judge-speaker, a spokesperson or other person acting as interlocutor for providing media relations; 4. Access to court premises; 5. Access to court sessions; 6. Photography and video shooting in the courtroom; 7. Other issues of fixing information, holding photography and video shooting outside court and in court corridors; 8. Photographing and video shooting outside the court session.

3. In Ukraine the coverage of the trial directly through the Internet is not yet practised, the distribution of relevant materials through television or radio, the Internet is possible after conducting appropriate filming, in accordance with the rules of procedural law. Thus, foreign practice of access to court sessions through the Internet is worth paying attention. However, it is expedient that a person who wishes to access the litigation in electronic form has taken certain actions, namely filling in the registration form as a party to the case, access to which he wishes to receive. To ensure this, technological, financial and other costs that may be obtained by providing this service by installing a fee, such as a court fee, are necessary.

4. The interaction between the judiciary and civil society institutions is facilitated by the monitoring of litigation, the practice of which exists, in particular, in Kazakhstan, Kyrgyzstan, and others. Such monitoring makes it possible to gather objective information on the administration of justice and on the basis of it to draw conclusions and recommendations on the functioning of the judicial system, which in turn increases the ability of civil society to assess judicial activity.

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